



STATE BOARD OF EQUALIZATION

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September 26, 1990

This office sent you a letter on May 10, 1989, setting forth our opinion on the change in ownership consequences of the sale of the Shopping Center. Subsequent to our letter, the taxpayer mailed us a copy of a document entitled, "Lease Modification Agreement," dated 1963, executed by the partnership, as landlord, and as tenant. A copy of this lease modification is attached.

This document contains a predecessor provision to the 20-year performance option which we previously thought commenced in the "Amendment to and Restatement of Lease" dated April 18, 1983. It therefore appears that the 20-year performance option was added to the lease in 1963 rather than in 1983. This revelation obviously materially alters many of the opinions expressed in our earlier letter. However, the execution of the 1983 lease may still possibly have caused a change in ownership of that portion of the property comprising the leasehold.

In reviewing the original and 1963 lease documents side-by-side with the 1983 restated lease, a number of material differences are noted, including the following:

- (1) Premises: In 1983, the definition of the "premises" was materially modified. In particular, the lease was expressly terminated as to the tire shop building (causing a change in ownership of that portion of the leasehold.) Further, provisions relating to common areas, nonexclusive uses, etc., were added at paragraph 1.1 of the 1983 lease.
- (2) Percentage Rent: These provisions were substantially modified in 1983. Further, at paragraph D of the Rent Rider to the 1983 lease, the tenant appears to be

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given a percentage rent off-set not present in the original lease documents.

- (3) Performance Option: Initially the landlord was to perform the work and the tenant was to fully pay the cost of the work over a 20-year amortization period, plus fixed and percentage rent. However, in the 1983 lease, the tenant is to perform the work, and receive a 50 percent reimbursement of the cost of the work from the landlord out of the percentage rents. Other terms and conditions of the performance option also appear to have been materially altered in 1983.
- (4) Renewal Terms: The options to extend were originally for 2 successive 10 year terms. In 1983, the successive option terms were changed, respectively, to 5 years, 5 years and 10 years.
- (5) Other Differences in Provisions: There are many other differences in the lease provisions, both in form and substance.

While there is no applicable legal authority of which we are aware, it is possible that a major restatement of a lease -- which materially and fundamentally changes the essential terms and conditions of the original lease -- may arguably constitute a termination of the original lease within the meaning of Revenue and Taxation Code, section 61(c). As stated in our earlier opinion, a restated lease which makes substantial changes to the original lease provisions can be considered as being a new lease between the parties, one which effectively terminates the original leasehold. Assuming that this argument is legally correct, the execution of such a substantially restated lease can be seen as "...the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options) ...," within the meaning of Revenue and Taxation Code, section 61(c).

Of course, any possible application of this approach to the facts of this case constitutes a question of fact as to which this office expresses no opinion.

September 26, 1990

Please call me should you have any further comments or questions.

Very truly yours,

A handwritten signature in cursive script that reads "Robert Lambert".

Robert W. Lambert
Tax Counsel

RWL:sp
3479H

Attachment

cc: Mr. John Hagerty
Mr. Verne Walton